

SENATE BILL 1831
By Harper

AN ACT to amend Tennessee Code Annotated, Title 62, Chapter 27, relative to polygraphs.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 62-27-122, is amended by deleting the language "The board" and by substituting instead the language "The commission".

SECTION 2. Tennessee Code Annotated, Section 62-27-123(b), is amended by deleting the language "any board member" and by substituting instead the language "any commission member".

SECTION 3. Tennessee Code Annotated, Section 62-27-123(c), is amended by deleting the language "any board member" and by substituting instead the language "any commission member".

SECTION 4. Tennessee Code Annotated, Section 62-27-125(1), is amended in the first sentence by deleting the language "prescribed by the board" and by substituting instead the language "prescribed by the commission".

SECTION 5. Tennessee Code Annotated, Section 62-27-105, is amended by deleting such section in its entirety and by substituting instead the following:

Section 62-27-105.

(a)

(1) The commission shall issue rules and regulations necessary for the administration and enforcement of this chapter and shall prescribe forms to be used in connection with it.

(2) The commission shall prescribe rules requiring continuing education as a prerequisite for renewal of licenses as polygraph examiners in accordance with Section 62-27-129.

(b) The commission shall have the right and power to contract for the services of any licensed qualified polygraph examiner to assist with the administration and analysis of polygraph examinations.

SECTION 6. Tennessee Code Annotated, Section 62-27-111(a), is amended by deleting subdivision (1) in its entirety and by substituting instead the following:

(1) Upon approval by the commission, an internship permit shall be issued to an intern applicant who has completed a recognized polygraph school; provided, that the intern applicant applies for such license and pays the required fee.

SECTION 7. Tennessee Code Annotated, Section 62-27-111, is amended by deleting subsection (b) in its entirety and by substituting instead the following:

(b) An internship permit shall be valid for the term of twelve (12) months from the date of issue. Such permit may be extended or renewed for any term not to exceed six (6) months upon good cause shown to the commission. The intern may apply to upgrade to an examiner's license after completion of six (6) months from the date of issue of the internship, provided, that all other requirements of this chapter are met.

SECTION 8. Tennessee Code Annotated, Section 62-27-111, is amended by deleting subsection (c) in its entirety and by substituting instead the following:

(c) An intern shall not be entitled to hold an internship permit after the expiration date of the original twelve (12) month period and six (6) month extension, if such

extension is granted by the commission, until twelve (12) months after the date of expiration of the last internship permit held by the intern.

SECTION 9. Tennessee Code Annotated, Section 62-27-111(d), is amended by deleting subsection (d) in its entirety and by substituting instead the following:

(d) All intern applicants are required to take and pass an intern examination as prescribed by the commission prior to the commencement of an internship unless the applicant has completed a polygraph school or held a polygraph examiner license in the state of Tennessee in the immediate preceding twenty-four (24) month period.

SECTION 10. Tennessee Code Annotated, Section 62-27-113, is amended by deleting subsection (b) in its entirety.

SECTION 11. Tennessee Code Annotated, Section 62-27-120, is amended by deleting such section in its entirety.

SECTION 12. Tennessee Code Annotated, Section 62-27-123(b), is amended by deleting the language "any board member" and by substituting instead the language "any commission member".

SECTION 13. Tennessee Code Annotated, Section 62-27-123, is amended by adding a new subsection thereto, as follows:

(e) It is a Class C misdemeanor to conclude a polygraph examination without affording the subject a reasonable opportunity to explain any deceptive reactions to relevant questions that are evident on the charts, unless the examinee is represented by legal counsel and such counsel requests the results be given to counsel rather than to the examinee.

SECTION 14. Tennessee Code Annotated, Section 62-27-124, is amended by deleting subsection (b) in its entirety and by substituting instead the following:

(b) If a polygraph examiner does not maintain audio and/or videotapes of all examinations and has a complaint of alleged impropriety lodged against the polygraph

examiner by an examinee, that examiner may be required to submit to a polygraph examination to be administered by a licensed polygraph examiner who is under contract with or has been selected by the commission. The examination shall include questions concerning the specific alleged impropriety lodged against the examiner being tested. The cost of the examination may be paid by the examiner against whom such complaint has been lodged at the time of such examination.

SECTION 15. Tennessee Code Annotated, Section 62-27-125, is amended by deleting such section in its entirety and by substituting instead the following:

Section 62-27-125. In order to protect the rights of the examinee in the administration of the polygraph examination, the following minimum procedures must be followed:

(1) Each prospective examinee shall be required to sign a notification and receive a copy of such notification on a form prescribed by the board, prior to the beginning of a polygraph examination, which contains the following information:

(A) That the examinee is consenting voluntarily to the examination;

(B) That the examinee has the right to refuse to take a polygraph examination;

(C) That the examinee has the right to refuse to answer any questions;

(D) That the examinee may terminate the examination at any time;

(E) That the examinee has the right to make a written request to the examiner within thirty (30) days of the examination to be furnished the results of the examination upon the payment of

a reasonable fee to be established by the commission to cover the cost of such results, and that, upon receipt of the written request and payment of such fee, the examiner shall, within thirty (30) days of receipt of such written request, provide the examinee with a written copy of any opinions or conclusions rendered as a result of the examination; and

(F) The name of the polygraph examiner, the examiner's polygraph license number issued by the commission, and the examiner's business address.

(2) If the polygraph examiner is a law enforcement official or other officer of the court, such fact shall be disclosed to the examinee prior to the commencement of the examination, and such examiner shall further inform the examinee that should the examinee choose to proceed with the examination, under such circumstances, any illegal activity disclosed during such examination may be used against the examinee in a court of law.

(3) The commission shall by rule and regulation establish appropriate forms and language to be contained on such forms to accomplish the purposes of this section.

SECTION 16. Tennessee Code Annotated, Section 62-27-126, is amended by deleting such section in its entirety and by substituting instead the following:

Section 62-27-126.

(a) The commission may, upon its own motion, and shall, upon the verified complaint in writing of any person setting forth a cause of action under this section, investigate and ascertain the facts and, if warranted, hold a hearing for reprimand, or for the suspension or revocation of a license.

(b) Complaints of alleged violations shall be filed in writing with the commission in a manner to be prescribed by the commission, and the commission shall prescribe the manner in which complaints shall be investigated.

(c) All hearings shall be conducted pursuant to the requirements of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

(d) If a polygraph examiner is found guilty of any violation of the provisions of this section, the commission shall impose penalties and fines for such violations, including, but not limited to, the following:

(1) For a first violation: six (6) months' suspension of the examiner's license, and a five hundred dollar (\$500) fine upon reapplication for a license. The provisions of § 62-27-115(b)(2) are applicable to such reapplication.

(2) For a second violation: one (1) year suspension of the examiner's license, and a one thousand dollar (\$1,000) fine upon reapplication for a license. The provisions of § 62-27-115(b)(2) are applicable to such reapplication; and

(3) For a third violation: permanent suspension of the examiner's license, and a fine of two thousand five hundred dollars (\$2,500).

SECTION 17. This act shall take effect July 1, 2003, the public welfare requiring it.